

## REMARKS

Claims 6-19 are currently pending, in this application. The Office has rejected claims 16 and 17 under 35 USC § 112, second paragraph, as being indefinite. Claims 6-19 have been rejected under 35 USC § 103(a) as being unpatentable over Ruppert et al. (U.S. Pat. No. 5,640,002; hereinafter “Ruppert”) in view of Garwood (U.S. Pub. No. 2003/0185948). This is a non-final Office action and is responsive to a communication filed on or about October 29, 2007.

### Amendments to the Claims

Applicant requests that the amendments to the claims be entered into the application. No new subject matter and no new elements are being entered. Claims 6 and 11 were amended to clarify the limitation already recited therein. Claim 15 was amended to correct punctuation. Claims 16 and 17 were amended in response to the 112 rejection to improve the readability of the claim.

### 112 Rejection

The Office rejected claims 16 and 17 stating, “They seem to repeat themselves unnecessarily ....” (Current Office action, page 2, item 2.) Applicant has amended claims 16 and 17 to improve the readability of the claims.

### 103(a) Rejection of Independent Claims 6, 11, and 15

Ruppert fails to show or suggest “a scale in communication with said processor and operative to obtain a weight measurement of an item for sale placed on said scale,” as required by Applicant. Applicant’s scale is part of a retail terminal that also comprises a processor and a first radio frequency identification tag antenna focused on a bagging area of the terminal and other devices. The scale is also in communication with the processor that comprises the retail terminal. The title of Ruppert’s invention is “Portable RF ID Tag and Barcode Reader.” Ruppert teaches several embodiments of the reader but all are portable devices and none have scales attached. Ruppert also describes devices that have scales but the devices do not have all the elements of Applicant’s retail terminal.

Ruppert describes one device having scales for weighing unpackaged items such as fruit and vegetables where a produce clerk uses a scale and bar code machine. The scale would weigh the item and automatically multiply the weight by the current price and output a properly encoded bar code. (See Ruppert, col. 11, lines 45-58, which are also cited by the office.) Clearly, this device is not what Applicant requires.

Ruppert describes another device, having an electronic scale 547, as a checkout station. (See *Id.*, col. 38, lines 7-23, which is also cited by the Office.) In this embodiment, the station does not scan or directly identify any items. The terminal relies on the portable reader to scan items and later supply data on the items previously scanned. Again, this device is not what Applicant Requires.

The Office asserts that Ruppert's teaching on these devices shows or suggests Applicant's claimed elements. However, as shown above, these devices fail to show or suggest all the required elements. The Office has failed to establish that Ruppert shows or suggests the above elements in Applicant's claimed invention.

Ruppert fails to show or suggest "a means for determining the identification of the item, at the weight scale," as required by Applicant. The Office cites Fig. 1 and Fig. 3 to support a teaching for this element. However, Fig. 1 is a top view of a portable handheld device and Fig. 3 is block diagram of the same device. The portable device does not have a scale attached. Applicant requires a means for determining the identification of the item, at the weight scale. Since the cited device has no scale, the Office has failed to establish the required elements of Applicant's claimed invention.

The Office has failed to establish that Ruppert shows or suggests "a first radio frequency identification (RFID) tag antenna in communication with the processor, and focused on a bagging area of the terminal," as required by Applicant. For this requirement, the Office makes citations to a portable handheld device and to a security tag deactivation circuit 518. However, neither is in communication with the processor of Applicant's retail terminal so neither can satisfy the requirements of this claim. The Office cites Fig. 19, which shows an RFID device 314, but it is connected to a processor located in the portable device, which does not meet the requirements of Applicant's retail

terminal. The security tag deactivation circuit 518 is connected to the host computer as shown in Fig. 27. The host computer is clearly not a retail terminal as required by Applicant. Therefore, the Office has failed to establish that Ruppert shows or suggest Applicant's required elements.

Ruppert fails to show or suggest "the program instructions operative to control said processor to compare the stored and measured weights for the identified item and to actuate the first RFID antenna to verify the identification of the item if there is a perceived error in the weight of the item as measured by the scale," as required by Applicant. The Office cites a passage that teaches, "the host computer calculates the total weight of the scanned items by using the product serial numbers and/or product class data received from the PID and compares this weight to the actual weight data of the items in the bags placed by the user on the scale 547 sent to the host by the scale." (Id., col. 38, lines 17-22.) Ruppert fails to teach the actuating of the first RFID antenna to verify the identification of the item if there is a perceived error in the weight of the item as measured by the scale. Therefore, Ruppert fails to show or suggest all the elements of Applicant's claimed invention.

Ruppert fails to show or suggest "the program instructions further operative to control said processor to compare the item identification determined by the means for determining the identification of the item and by the first RFID antenna," as required by Applicant. Ruppert never teaches using two different means to identify an item and then comparing the results of the identification. The Office cites a passage that merely describes how an RF ID tag works. Therefore, Ruppert fails to show or suggest all the elements of Applicant's claimed invention.

Ruppert fails to show or suggest "the scan error indicator only being actuated if the comparison of the identification of the item raises a discrepancy," as required by Applicant. Ruppert teaches that the security clerk is notified when the actual weight does not match the stored predicted weight. Applicant actuates the scan error indicator only if the comparison of the identification of the item raises a discrepancy. These are different

functions. Therefore, Ruppert fails to show or suggest all the elements of Applicant's claimed invention.

103(a) Rejection in View of Garwood

Garwood teaches packages and methods for processing food products and fails to provide any of the elements shown to be missing from Ruppert.

Dependent Claims

The remaining dependent claims are allowable for at least the same reasons as the corresponding independent claim.

## CONCLUSION

Applicant asks the Office to reconsider this application and allow all pending claims. Please charge any fees that might be due, excluding the issue fee, to deposit account 14-0225.

Respectfully submitted,

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